IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10446 of 2007
Date of decision 27.9.2007

The State of Punjab .. petitioner
Versus
M/s Oswal Knit India Ltd. and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Amol Rattan Singh, Addl. AG Punjab for the petitioner
Mr.K.L.Goyal, Advocate for the respondents.

M.M.Kumar, J.

The State of Punjab has filed the instant petition challenging order dated 20.2.2007 (Annexure P.5) passed by the VAT Tribunal,Punjab in Appeal No. 264 of 2006-07.

Brief facts of the case are that on 13.8.2003, vehicle No. PB 10W 2992 reached Information Collection Centre, Shambu (Export). It was revealed that the goods were being transported from Ludhiana to Delhi. The driver of the vehicle produced challan No. 2346 and 2347 in respect of the goods both dated 13.7.2003 issued by M/s Oswal Knit India Ltd., Ludhiana. The goods were hosiery goods valued at Rs.3,62,000/- in favour of Shri Navdeep Chhabra of New Delhi. At the ICC Centre it generated ST XXIV-A form a document which was lateron produced before the Excise and Taxation Officer on duty. It was found that 442 hosiery pullovers were sent to Shri Navdeep Chhabra, New Delhi showing the item as 'sample sets'. The price was worked out at Rs. 3,62,000/- on which tax @ 4.4% was charged in the bill. The Revenue found that such a big consignment of 442 sample sets of pullovers could not be considered in consonance with the practice of sending sample sets in the hosiery trade . It was suspected to be inter-state

sale in the course of inter-state trade and commerce to an unregistered dealers sent under the garb of sample sets. Accordingly the goods were detained by the Detaining Officer under Section 14 B(6)(i) of the Punjab General Sales Tax Act, 1948 vide order dated 13.7.2003. On notice, Shri D.P. Chopra, Accounts Officer of the Consignor company appeared but he did not produce account books nor any explanation was offered as to why the pullovers did not carry a tag showing them as sample sets. The Detaining Officer forwarded the case to the Assistant Excise and Taxation-Commissioner by treating the consignment as sale to unregistered dealer for taking action under Section 14 B (7)(ii) of the Act. After issuance of show cause notice and making further enquiry the Assistant Excise and Taxation Commissioner reached the conclusion that there was an attempt to evade tax and accordingly he levied penalty of Rs. 90,000/- vide order dated 14.7.2003. The matter was taken in appeal before the Deputy Excise and Taxation Commissioner who held that the goods were infact sold in the course of inter-state sale as is amply proved by charging of 4.4% Central Sales Tax and that sending of large number of 442 pieces of pullovers of one size for a particular value would further lead to such an inference that the assessee-respondent was evading payment of sales tax. The Deputy Excise and Taxation Commissioner accordingly upheld the order of the Assistant Excise and Taxation Commissioner.

On further appeal filed by the assessee- respondent, the Tribunal held that the view taken by the authorities below could not be sustained and no penalty could have been imposed. According to the views expressed by the Tribunal the company had issued two central excise gate passes cum invoices under Rules 52(a) and 173 G of the VAT Rules in the

name of its employee Shri Navdeep Chhabra specifically indicating that the goods were sample sets. The fact of payment of central sales tax was recorded in the invoices. The goods were detained during the course of transportation from Ludhiana to Delhi by taking the plea that the transaction was a sale and CST chargeable was @ 10 percent as against 4% which was actually charged. The Tribunal found that there was no evidence to suggest if any enquiry for determining the nature of the transaction or of sale was conducted by the Detaining Officer or by the Penalising Officer. Even the statement of Navdeep Chhabra was not recorded who is stated to have effected the inter-state sale. Therefore the statement made in the invoices which specifically mentioned that the goods were sample sets could not be doubted by the authorities below for the purposes of imposing penalty on the assessee- respondent. The Tribunal has also opined that the assessee-respondent had filed declaration before the competent authority after the receipt of the goods back in the factory from Delhi for exhibition. The declaration has been accepted without any doubt. The Tribunal went on to observe in the penultimate para as under:

> " There was no evasion of the Punjab Tax under the Vat Tax. There was only alleged less charging of the CST on the goods and this issue, under the CST Act could be gone into by the assessing authority and not by the penalising officer under Section 14 B (7) of the VAT Act. There was infact virtually no evasion of any tax. The goods were only sent by the appellant company as sample goods to Delhi after issuing the invoices in the name of Sh. Navdeep Chhabra who organised the exhibition on behalf of the company, at Delhi and those very goods were

received back after the exhibition by the company regarding which even declaration were duly filed and accepted by the competent authority."

We have heard learned counsel for the parties at a considerable length and find that the findings of fact have been recorded by the Tribunal which are based on the statements made in the invoices that the goods were being sent as sample sets. The contrary inferences drawn by the Excise and Taxation Commissioner and Deputy Excise and Taxation Commissioner have been found to be unwarranted especially when there was no evidence to that effect. Even the statement of Shri Navdeep Chhabra to whom the goods are supposed to be sold has not been recorded. The findings recorded by the Tribunal proceeds on the correct premise because evidence to that effect in the invoices and in the form of declaration is available on record whereas no evidence contradicting those facts have been brought on record. The findings of the Asstt. Excise and Taxation Commissioner and Dy. Excise and Taxation Commissioner are based on conjectures, surmises and suspicion. There is no evidence to sustain those findings as correctly observed by the Tribunal. There is thus no merit in the petition and the same does not merit admission.

The argument of the learned counsel for the assessee-respondent that only VAT appeal under Section 68 of the Act could have been filed before the High Court does not need to be gone into in the present case because we have found the petition without merit and have dismissed the same. Therefore, the issue as to whether against the order of the Tribunal an appeal would lie or a writ would be competent has been left open.

In view of the above, the writ petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

27.9.2007
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